

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHRISTOPHER TYLER LOFTON,
Individually and on behalf of the ESTATE
of CHRISTOPHER M. LOFTON, deceased;
and SANDY LYNN LOFTON as Next
Friend for TEGAN LOFTON and LAUREN
LOFTON, Minor Children, on their behalf
and on behalf of the ESTATE of
CHRISTOPHER M. LOFTON, deceased,

Plaintiffs,

vs.

MCNEIL CONSUMER & SPECIALTY
PHARMACEUTICALS, a Division of
MCNEIL-PPC, INC., and JOHNSON &
JOHNSON,

Defendants.

CIVIL ACTION NO. 3:05-CV-1531-L

**PLAINTIFFS BRIEF IN RESPONSE TO DEFENDANTS'
SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT
ON PLAINTIFFS' DEFECTIVE DESIGN
AND BREACH OF IMPLIED WARRANTY CLAIMS**

**I.
Summary**

Defendants have moved for Supplemental Summary Judgment on the following grounds:

1. Plaintiffs cannot prove a defective design case by saying that the Defendant should have sold a different drug; and
2. Plaintiffs breach of implied warranty claim should be dismissed because the defective design case cannot be proved and for failure to provide pre-suit notice of the breach of implied warranty.

Based on Texas case law that has come down since the Original Motion for Summary Judgment and Response were filed, Plaintiffs no longer have sufficient

evidence on the above two claims upon which Defendants move for Supplemental Summary Judgment and Defendants' Motion should be granted.

Dated this 20th day of August, 2010

Respectfully submitted,
LAW OFFICES OF TED LYON & ASSOCIATES
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By: /s/ Bill Zook
BILL ZOOK
State Bar No. 22285500

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on August 20, 2010, I electronically filed the foregoing document with the Clerk of the court for the United States District Court, Northern District of Texas, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of the document by electronic means: Robert K. Mitchell, Thompson & Knight, 1722 Routh Street, Suite 1500, Dallas, Texas 75201.

This is to certify that a true and correct copy of this document has been served via email to the following individual on this the 20th day of August, 2010: Robert K. Mitchell, Rob.Mitchell@tklaw.com, Thompson & Knight, 1700 Pacific Avenue, Suite 3300, Dallas, Texas 75201.

/s/ Bill Zook
BILL ZOOK